IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4253 of 2007()

CMP.5079/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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REVN. PETITIONER: PETITIONER/ACCUSED

BINOD, S/O. ACHUTHANKUTTY,
PUNHAKKODE KALATHIL HOUSE, THENKURISSI AMSOM,
DESOM, PALAKKAD.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4253 of 2007

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Dated: 28-11-2007

O R D E R

Petitioner who was originally the first accused and presently the sole accused on the file of the J.f.C.M., Tirur faces charge for an offence punishable under Section 498 A I.P.C.. Originally he along with his parents were prosecuted for the offence. His father died and the charge as against him abated. His mother filed Crl. M.C. before this Court to quash the proceedings against her and this court after granting a stay of the proceedings eventually quashed the proceedings against her. The petitioner is employed in South Africa. After he came to India he filed Crl. M.C. 2575 of 2007 before this court praying for a direction to consider his application for bail on the same day. This Court directed the learned Magistrate to consider the petitioner's bail application on the same day after giving notice to the Public Prosecutor. The original order passed by this Court on 10-08-2007 was subsequently revised on 16-08-2007 deleting the sentence which reads “the petitioner had entered appearance and has been released on bail”. On 23-08-2007, he surrendered before the court below and was released on bail. Subsequently, the revision petitioner filed the present application namely C.M.P. No.5079 of 2007 under Sec. 317Cr.P.C. to exempt him from personal appearance. That application was dismissed on 19-10-2007 as per the impugned order mainly for the reason that the case was pending before that court since 2004 and if that petition is allowed the presence of the petitioner could not be secured in the near future. It is the said order which is assailed in this Revision.

2. When this revision came up for hearing, the learned Public Prosecutor placing reliance on the decision reported in AIR 1977 SC 2185 submitted that since the impugned order is an interlocutory order, this Revision is not maintainable. I am afraid that I cannot agree with the above submissions. The petitioner who is employed in south Africa sought for personal exemption during trial since he fears that he may lose his job if he is detained here for a long period within which period alone the trial of the case can be expected to be over. Dismissal of that petition is a matter of vital consequence to the revision petitioner and it cannot be said that it is only an interolocutory order barring a revision.

3. Since the question of identity does not arise in a prosecution of this nature, I see no reason the magistrate dismissed the application for personal exemption. Hence, notwithstanding the reasons stated by the magistrate in his order dated 19-10-2007 in C.M.P. No. 5079 of 2007 the petitioner may file an application for exemption from personal appearance during trial of the case and the said petition as and when filed shall be considered on merits by the Magistrate bearing in mind that the case does not involve a question of identity of the accused and the physical presence of the accused may be necessary only at the end of the trial. Hence this Revision is disposed of without prejudice to the right of the petitioner to move the Magistrate again.

V. RAMKUMAR, JUDGE.

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